

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

SECOND APPEAL NO.1251 OF 1993

E. Ekambaram .. Appellant

-Vs-

1. R. Deena Dayalu Naidu
2. D. Raghunatha Babu
3. R. Anusuya .. Respondents

This second appeal is preferred under Section 100 of CPC against the judgment and decree of the learned Subordinate Judge of Kancheepuram dated 29.9.1992 in AS No.45 of 1991 confirming the judgment and decree of the learned District Munsif, Kancheepuram dated 22.3.1991 in OS No.225 of 1982.

!For Appellant : Mr.V.Nicholas

^For Respondents: Mr.S.Sathianarayanan for R3
No appearance for RR1 and 2

:JUDGMENT

This second appeal has been brought forth from the judgment of the learned Subordinate Judge, Kancheepuram made in AS No.45 of 1991, wherein the judgment of dismissal by the trial court in OS No.225 of 1982 , a suit for specific performance on the basis of an agreement of sale of an immovable property was affirmed.

2. The plaintiff has sought the relief stating that the immovable property situated in Door No.37/A/2 belonged to the defendants 1 and 2; that they agreed to sell the property to the plaintiff on 2.8.1981 and the document was marked as Ex.A.1; that the consideration was fixed at Rs.8500/-; that an advance of Rs.1000/- was paid on that day; that the balance should be paid on or before 2.11.1981; that despite many demands made, there was an evasion on the part of the defendants; that the second defendant sold the property to the third defendant; that the plaintiff issued notice to all the defendants under Ex.A.2 dated 7.11.1981, which resulted in a reply by the first defendant found under Ex.A.3 dated 12.11.1981 containing false allegations, which compelled the plaintiff to file the suit for specific performance.

3. The defendants 1 and 2 remained exparte. The third defendant contested the suit by stating that the suit property belonged to one

Krishnaveni Ammal; that on her death about 30 or 32 years ago, her son, the second defendant, who was the only legal heir, was entitled to succeed the same, since she did not make any arrangement with regard to the property; that the suit property belonged to number of sharers; that the father-in-law of the third defendant was also occupying a portion of the suit property; that the third defendant had purchased the suit property from the second defendant on 29.7.1981 even before Ex.A.1 agreement, and thus, the first defendant had no right in the suit property and the third defendant was the bona fide purchaser for the value, and hence, the suit was to be dismissed.

4. The trial court framed necessary issues, tried the suit and dismissed the same. An appeal was preferred by the plaintiff, which was also dismissed. Hence, this second appeal has been brought forth by the plaintiff in the suit.

5. At the time of admission, the following substantial question of law was formulated by this Court for consideration:

"When the first defendant is also entitled to half share in the suit property as per sections 15 and 16 of the Hindu Succession Act, 1956 , whether the courts below are correct in dismissing the suit in its entirety?"

6. Heard the learned counsel for the appellant and also the learned counsel for the respondents on those contentions.

7. After careful analysis of the evidence and the scrutiny of the materials available, this Court is of the considered view that this appeal carries no merit. It is not in controversy that the suit property originally belonged to Krishnaveni Ammal. The first defendant is her husband and the second defendant is her son. The agreement, in question, was executed by the first and second defendants. There is evidence to show that the original owner of the property died in the year 1950 even before the commencement of the operation of the Hindu Succession Act, 1956. Thus, it would be quite clear that the property was devolved upon the second defendant, since she did not make any arrangement in respect of the property.

8. The suit was filed on the basis of the agreement of sale entered into between the plaintiff on one side and the defendants 1 and 2 on the other side on 2.8.1981. The first and the second defendants remained exparte. The third defendant has contested the suit. What was all contended by the third defendant was that he has purchased the property from the second defendant on 29.7.1981 under Ex.B.1. The second defendant was the absolute owner of the property, in question. He executed a sale deed in favour of the third defendant. Thus, it would be clear that the second defendant, who was the exclusive owner of the property, in question, has executed the sale deed under Ex.B.1 on 29 .7.1981, even before the date of Ex.A.1 agreement, in question, and thus, on the date when Ex.A.1 agreement was entered into between the parties, the second defendant, who was the owner, had no subsisting interest or right over the property to enter into such an agreement. Under the stated circumstances, Ex.A.1, even assuming that it is true and genuine, could not enforce, since the first defendant had no interest over the property and the second defendant had no subsisting interest over the property, in question. This Court is of the considered view that the judgment of both the courts below have got to be sustained.

9. In the result, this second appeal fails and the same is dismissed, leaving the parties to bear their costs.

Index : Yes

Internet : Yes

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To

1. The Subordinate Judge, Kancheepuram

2. The District Munsif, Kancheepuram

3. The Record Keeper, VR Section,

High Court, Madras

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